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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 November 2002 (S/2002/1281).

The Counter-Terrorism Committee has received the attached third report from Austria submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-27859 (E) 190303

Annex

Note verbale dated 24 February 2003 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Austria to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit herewith Austria's third report on the implementation of resolution 1373 (2001) (see enclosure).

Enclosure

Additional information by Austria to the Committee established under article 6 of resolution 1373 (2001) adopted by the Security Council at its 4385th meeting on 28 September 2001*

In his letter of 15 November 2002, the Chairman of the Counter-Terrorism Committee (CTC) established under article 6 of resolution 1373 (2001) asked Austria to submit some further information on the steps taken to implement the resolution. In addition to the supplementary report of the Government of Austria submitted in a letter dated 2 August 2002, Austria is pleased to provide the CTC with the following additional information.

1. Implementation measures

1.1. Bill to criminalize the financing of terrorism (concerning item 1.1. of the letter of the CTC dated 15 November 2002)

A recent amendment which has broadened the scope of the Penal Code and inter alia criminalizes the financing of terrorism and the collection of funds for terrorist purposes by terrorist groups and others entered into force on 1 October 2002 and can be found at

http://ris.bka.gv.at/taweb-cgi/taweb?x=d&o=l&v=bgbl&db=BGBL&q={$QUERY}&sl=100&t=doc4.tmpl&s=(134/2002):PORG%20und%20(1):TEIL

(see in particular Sections 278b, 278c and 278d of the Penal Code dealing specifically with terrorism including the financing of terrorism). An English working translation of the most important provisions both of the Austrian Penal Code and the Austrian Code of Criminal Procedure concerning the criminalisation of terrorism is annexed to this report.

1.2. Amendment relating to the EU Money-Laundering Directive (concerning item 1.3.)

The final necessary amendments in relation to the EU Money Laundering Directive will take effect in the coming months. The CTC will be informed as soon as the relevant acts have been enacted.

1.3. Freezing of funds, assets and economic resources of individuals and entities (concerning item 1.4.)

There are **three different legal instruments** available in Austria in order to achieve the objectives set out in sub-paragraph 1 (c) of resolution 1373 (2001).

* Enclosures are on file with the Secretariat and are available for consultation.

Firstly, **EU Council Regulation (EC) No 2580/2001 of 27 December 2001** on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344 of 28 December 2001, p. 70) which is directly applicable in Austria, freezes funds, financial assets and economic resources of, and prohibits the provision of financial services to, persons, groups and entities involved in terrorism. It foresees that the Council will establish and maintain a list of persons, groups and entities involved in terrorism. The latest version of the list is laid down in Council Decision 2002/974/EC (OJ L 337 of 13 December 2002, p.85).

Secondly, based on EU Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ L 344 of 28 December 2001, p. 93) the **Oesterreichische Nationalbank set up special restrictions on the movement of capital**, e.g. freezing of funds, in a legally binding official announcement. The latest amendment dated 15 January 2003 can be found at

http://www2.oenb.at/kundmach/kundm_dl3_2002_e.pdf.

Thirdly, the amended **Penal Code and the Code of Criminal Procedure** (see reference under 1.1.) implementing both Resolution 1373 (2001) and the International Convention for the Suppression of the Financing of Terrorism provide the possibility to issue an **injunction with respect to funds, assets and economic resources of individuals and entities, either resident or non-resident**, if they are linked to terrorism. The relevant provisions include funds, assets and economic resources suspected to have been obtained through or could be used for the commitment of a criminal act as defined in Section 278d of the Penal Code. In addition, this procedure applies also to funds, assets and economic resources within the disposition of a criminal organisation or a terrorist group.

As regards the **request of another country** to freeze funds linked to terrorism that are held in financial institutions in Austria, the Austrian law permits such a freezing irrespective of whether that country is a member of the EU or not. In case of Austrian jurisdiction, however, the relevant provisions of the Penal Code will primarily apply to funds linked to terrorism that are located in Austria. Thus, the above-mentioned injunction will be issued regardless of whether or not a request of another country to freeze such funds exists.

As regards requests of other countries in general, based on Section 144a of the Code of Criminal Procedure in connection with Sections 20 and 20b of the Penal Code an injunction can be issued by the competent Austrian court with respect to proceeds suspected to have been obtained through or for the commission of a criminal offence, including a terrorist offence, as well as assets within the disposition of a criminal or a terrorist organisation (Sections 278a and b of the Penal Code). On the basis of such an injunction, funds that are held in financial institutions in Austria can be frozen on the request of any other country.

In accordance with the relevant provision of the International Convention for the Suppression of the Financing of Terrorism, the explanatory memorandum regarding section 278(d) of the Penal Code explains that "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired. According to the above mentioned provision "funds" encompass also legal documents or instruments in any form, including electronic or digital, evidencing title to such assets, such as bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit.

1.4. Mechanism to oversee and monitor the collection and the use of the funds by non-profit organisations to ensure that they are not diverted for purposes of terrorism (concerning item 1.5.)

As a general assessment it has to be stated that the Penal Code criminalizes the use or collection of funds to facilitate a terrorist act. Any non-profit organisation that would attempt to divert funds for purposes of terrorism, either within or outside Austria, would fall under these provisions. The same would also apply to the collection of funds with the view to use them for a terrorist act at a later stage. In view of the provisions of the Penal Code, since 11 September 2001 the Austrian Ministry of Interior initiated several investigations based on information about suspicious possible links between non-profit organisations and terrorism.

Many charitable institutions and similar entities conduct their activities as an association at law. The relevant law requires such institutions or entities to register and to meet certain qualification requirements to ensure transparency and accountability. In accordance with the relevant FATF recommendations and in cases where larger amounts of money from public sources are involved, the law in particular contains safeguards in order not to create loopholes for terrorist financiers. For instance if the revenues or expenses of associations exceed a certain threshold (higher than €1 million during two consecutive years) a detailed annual financial statement is obligatory. Furthermore, if the collected funds exceed a certain limit (more than €1 million in two consecutive years respectively) an annual audit has to be performed by a Certified Public and a Chartered Accountant.

In addition, the non-profit sector in Austria established a representational and self-regulatory mechanism to protect the sector against abuse (inter alia an Austrian "Quality Seal" for non profit organisations (Spendegütesiegel) exists since November 2001 which at the moment covers 87 NPO). Such measures will in the future be encouraged as an important method of decreasing also the risk of possible misuse of NPO by terrorist groups.

As regards the question of tax deductibility, according to the Austrian Law on Income Taxes, donations (e.g. to charitable organisations) are not tax-deductible. A tax benefit is however foreseen for donations to scientific institutions. The favoured categories of donation recipients are listed in the law (universities, research promotion funds, certain museums, etc.). The federal tax administration authorities are authorised within the legal framework to recognise such non-profit-making associations and institutions in the field of research and

science as favoured donation recipients on an individual basis. A list of these favoured recipients is published by the Ministry of Finance annually and can be found at

http://www.bmf.gv.at/steuern/Einkommensteuer/Erlaesse/Spenden/_start.htm

1.5. Further information on the amendments of the Banking Act and the Gaming Act (concerning item 1.6.)

Due to the current negotiations for the formation of a new Government after the general elections in November 2002, the important issue concerning the proposed amendments of the Banking Act and the Gaming Act including provisions for credit and financial institutions for the extended control and reporting requirements on possible terrorist financing have yet not been forwarded to the Austrian Parliament. However, the CTC will be informed as soon as both acts have been enacted.

1.6. Criminalisation of the use of Austrian territory for the purpose of committing terrorist acts against another State or its citizens or for the purpose of financing, planning and facilitating of such terrorist acts (concerning item 1.7.)

The new provisions of the Austrian Penal Code concerning terrorism cover the above-mentioned acts even though no related terrorist acts have actually been committed or attempted. Thus, neither leading or participating in a terrorist group according to section 278b of the Penal Code nor the financing of terrorism according to section 278d of the Penal Code require that a terrorist act has already been committed or attempted. It would for instance be sufficient if funds are collected or if members are recruited only with a view to commit terrorist acts later on. Furthermore, it is not relevant whether or not the terrorist acts take place on Austrian territory or are targeted against Austria.

1.7. Outline of the provisions of laws that prevent the recruitment to terrorist groups either inside or outside Austria (concerning item 1.8.)

Section 278b of the Austrian Penal Code criminalizes the leading of and the participation in a terrorist group. For the purpose of further defining the meaning of "participation" Section 278b para. 3 refers to Section 278 para. 3 of the Penal Code which stipulates that anybody who inter alia supports a (criminal) group by providing information or assets or in any other way with the awareness that he/she thereby promotes the group or its criminal acts participates as member in the group. As has been pointed out explicitly in the explanatory memorandum to the government bill that introduced this concept, "recruiting" is an example for such a support "in another way".

1. 8. Foreign nationals who are in Austria and are alleged to have committed a terrorist act outside Austria (concerning item 1.9.)

Austrian Penal law requires to prosecute foreign nationals who committed a terrorist offence outside Austria and who are found in Austria and can not be extradited.

Under Section 64 para.1 subpara. 9 of the Penal Code, there is Austrian jurisdiction regarding the following offences committed abroad:

- conspiracy to commit terrorist offences (Section 278b of the Penal Code); and
- terrorist offences (Section 278c of the Penal Code),

provided inter alia that the perpetrator was a foreign national at the time of the commission of the offence and his/her surrender or extradition is refused.

Under Section 64 para. 1 subpara. 10 of the Penal Code, there is Austrian jurisdiction with regard to the offence of financing of terrorism (Section 278d of the Penal Code) committed abroad, provided inter alia that the perpetrator is found in Austria and cannot be extradited to another State. Furthermore, Section 65 para.1 subpara. 2 of the Penal Code provides for Austrian jurisdiction over foreign nationals who have committed criminal offences, including terrorist offences, abroad and are found in Austria and cannot be extradited to another State.

2. Assistance and guidance

Austria concentrates its efforts particularly on technical assistance using multilateral channels. For instance, in 2002 Austria pledged and disbursed the amount of USD 1,000.000,-- for the United Nations Office on Drugs and Crime Programme against Terrorism, implemented by the ODC Terrorism Prevention Branch (TPB). Focusing on operational activities to promote the implementation of counter-terrorism instruments, the TPB identifies countries in need of assistance, provides legal advisory services and develops tools for technical assistance. In order to help countries to implement both the provisions of resolution 1373 (2001) and the pertinent United Nations legal instruments to fight terrorism, legislative guides and implementation kits are being prepared and relevant legislation and model laws are collected, analysed and disseminated.

Austria too sees particular value in addressing counter-terrorism and assistance in combating transnational organised crime and illicit drug trafficking in a combined manner. Since in most countries law-making and implementation measures in both areas are required to be done, often by the same authorities and experts, combined advice is not only useful and efficient, but it also enhances the quality of the results.

In 2003 probably more than 20 counties will benefit from expert advice under this programme. Thus, Austria strongly believes that ODC activities in counter-terrorism assistance might also attract other donors seeking effective ways in making their contribution.

Other activities include the organisation of an "Air Marshal" seminar in October 2002. EU member States, EU candidate countries as well as other interested countries took part in this seminar that focused on air safety. Exchange of information on the deployment of Air Marshals, threat analysis and security on board of airplanes including their legal bases and possible future perspectives for the deployment of Air Marshals were the main issues discussed.

On the bilateral field, beside expert meetings with many different countries, in 2002 two workshops on combating terrorism were organised with Bulgaria and Romania, respectively. Because of their success similar workshops with other countries will follow.